IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No.325 OF 2006

Anil Alex Victor Mendes .. Appellant

versus

Mr Alban Anthony Hendrix & Ors. .. Respondents

...

Mr. Jitendra G. Damani for appellant.

Mr P.M. Shah for respondent no.2

Mr. T.R. Patel i/b. Mr D.R. Singh for respondents 4 to 6

CORAM : D.G. KARNIK, J

DATED : 7th November 2006

P.C.:

1. Heard counsel for the parties. This appeal is directed against the order dated 19th April,2005 passed by the learned Judge of the City Civil Court rejecting the appellant's application for injunction regarding the suit right of way.

2. The learned Judge has given elaborate reasons for rejecting the relief of injunction. I am in agreement with the said reasons.

3. Learned counsel for the appellant however submitted that the appellant has right of way by way of easement of necessity as there is no other way. Under Section 13 of the Easements Act for the purpose of claiming easement of necessity the dominant tenement and servient tenement must have been owned by a common owner somewhere in the past. There is no pleading much less proof that dominant tenement and servient tenement were owned by a common owner. In the circumstances the appellant cannot claim easement of necessity.

4. Learned counsel for the respondent submitted that prima facie city civil court has no jurisdiction to entertain and try the suit. The suit has not been properly valued and on proper valuation the suit will be beyond pecuniary jurisdiction of the city civil court. In substane suit is for declaration of easement and claiming injunction to protect the right of way as an easement. Such suit is covered under Section 6 (iv)(e) of the Bombay Court Fees Act which says that in a suit for declaration of easement, court fee payable would be

one fourth of the ad valorem fee payable for suit of possession of a servient tenement or a dominant tenement which is less. Suit has not been valued under Section 6 (iv) (e) of the Bombay Court Fees Act and the value of dominant tenement and servient tenement is not mentioned in the plaint. The suit is not properly valued and the proper valuation, as submitted by the learned counsel for the respondent, will be more than Rs.50,000/- which is pecuniary limit of the jurisdiction of the city civil court. As laid down by the Supreme Court in Shivkumar Chhadda v/s Delhi Municipal Corporation reported in (1993) 3 SCC 161 in order to claim a relief of injunction the plaintiff (appellant herein) is required to make out a strong prima facie case including on a question of maintainability of the suit. Prima facie, the suit is not maintainable in the city civil court as its pecuniar jurisdiction is limited to Rs.50,000/-.

5. In the circumstances there is no merit in the appeal which is hereby dismissed summarily. Request of the learned counsel for the appellant to continue the order of injunction for 8 weeks is rejected.

(D.G. KARNIK, J)